Supreme Court, U.S.
FILED
OCT 04 2008
OFFICE OF THE CLERK

112 D

08-657

IN THE

Supreme Court of the United States

Lawrence D. Marvin,

Petioner

v.

Fraternal Order of Eagles Aerie #200,

Respondents

On petition for Writ of Certiorari to the
Nebraska Supreme Court

PETITION FOR WRIT OF CERTIORARI

(MR.) LAWRENCE D. MARVIN
Pro se
100F Building Suite 201
635 North Main Street
Fremont, Nebraska 68025
1-402-372-8978
American citizen pro se

IN THE

Supreme Court of the United States

Lawrence D. Marvin,

Petioner

v.

Fraternal Order of Eagles Aerie #200,

Respondents

On petition for Writ of Certiorari to the
Nebraska Supreme Court

PETITION FOR WRIT OF CERTIORARI

(MR.) LAWRENCE D. MARVIN
Pro se
I00F Building Suite 201
635 North Main Street
Fremont, Nebraska 68025
1-402-372-8978
American citizen pro se

QUESTIONS PRESENTED

1. Were the Latino church tenants of Marvin's basement assembly-community rooms entitled to Life Safety enforcement, by local and state fire officials?

2. Would the results of this matter have been better, had Marvin asked the County Sheriff, instead of the Fire Chief and Nebraska Fire Marshal Deputy to remove the trespassing obstruction from Marvin's land?

3. Does the U.S. Patriot Act of 2001 and the Nebraska Terrorism Revised Statutes 28-300, 28-310 and 28-311.01 prevent Marvin from forcefully removing a trespassing obstruction from his fire exit egress walkway permanent route, using self help?

4. Shouldn't this civil conviction of conversion be overruled, reversed, or amended?

5. Why didn't the RESPONDENT take possession of the UNIT when they heard the loud pop when Marvin snipped the power to the unit and they knew Marvin was out there?

6. Why wasn't Marvin granted IMMUNITY, instead of civil conviction of conversion for obeying Life Safety Codes and Nebraska Statutes and Regulations in removing the trespassing obstruction?

7. Is it an act of terrorism to hire and pay an

7. continued)
operative to obstruct a permanent fire exit egress walkway route, violating NRS 81-514 and 81-538 federal CFR 1910.36?

8. Why didn't the Court see extenuating circumstances or extra ordinary circumstances on the removal of the trespassing unit-obstruction?

9. Why didn't the Court see habitual contempt of Court Order #23784?

10. Isn't the act of PERJURY completed or consumated when the respondent accepts damages for food when they knew exactly when Marvin cut the power to the trespassing unit-obstruction, and they could have removed the food, so they willfully wasted the food and with inadequate proof of what was wasted from the refrigerated unit, by doing nothing and testi fying that the unit was there at 9 P.M.?

11. Was it blatant RACISM and HATE CRIME to obstruct the fire exit egress of Latinos renting Marvin's assembly community rooms and then refusing to remove the obstruction?

12. Do the federal CFR 1910.36 and the Nebraska LIFE SAFETY CODES and Revised Statutes prevent Marvin from using self-help in removing a trespassing obstruction from his fire exit egress walkway permanent route, so he can't obey his Nebraska and Fremont occupancy permits for various floors in his large building?

13. Why wasn't Marvin allowed JUSTIFICATION in removing the obstruction for unpaid fiat lease (s) and the obstruction owners refusing to leave, instead of civil conversion?

14. Is Lawrence Marvin intitled to Equal Protection under our laws?

15. Do provincial interpretations of law take precedence over national interpretation of law?

16. Do U.S. RICCO laws suppliment protections to Lawrence Marvin against repeated trespass and refusal to leave, by an organization?

17. Why didn't the Court PRE-EMPT the ruling of civil conversion?

18. Why didn't the Court see EXIGENT CIRCUMSTANCES on the removal of the trespassing obstruction?

19. Does this case show that a single solitary American citizen is helpless against an organization?

20. Why didn't the RESPONDENT take possession of the UNIT when telephoned by Marvin's attorney, within 24 hours of removal?

21. Wasn't the RESPONDENTS full intention to replace the unit back on Marvin's property, which they did?

22. Did the Court comprehend that the second unit also violated, POSTED PROPERTY, and COURT ORDER #23784, and failure to pay FIAT LEASE RENT and other required expenses?

23. Isn't the act of FRAUD completed or consumated when the RESPONDENT accepts the supersedeous bond money which Marvin placed in control of the Dodge County Court?

24. Shouldn't the damages for food loss be overruled or reversed for no proof?

25. Marvin didn't know his rights and could have been harmed or injured by the power to the trespassing obstruction, so what were Marvin's rights?

26. Do terrorists and Hate Crime participants fire bomb churches both occupied and unoccupied?

27. Can and should we negotiate with terrorists?

28. Aren't FIAT LEASES an illegal contract and are Courts allowed to rule in favor of the FIAT LEASOR by 100%?

29. At what point is an American citizen allowed to use SELF-DEFENSE and is this self-help?

30. At what point is an American citizen allowed to be a GOOD SAMARITAN and use self-help?

31. At what point is an American citizen allowed

31. continued)
to use CITIZEN ARREST by using self-help?

32. Why should the Nebraska Court system penalize Marvin for not choosing to create a new zig-zag maze around the trespassing obstruction of Marvin's fire exit egress walkway permanent route?

33. Did the local and state authorities get the trespassing obstruction removed when Marvin asked for their intervention?

34. Why didn't the Court see the fraudulent CLAIM for food damages?

35. Why didn't the Court read the TERRORISM viewpoint that Marvin testified to in his DEPOSITION?

36. Why didn't the Court assess terroristic threats against all officers of the organization for placing the obstruction on Marvin's exit egress?

37. Why didn't the Court assess terroristic threats against at least some officers of the organization refusing to unobstruct Marvin's exit egress?

38. Why didn't the Court credit Marvin with monetary assessment against the FIAT LEASE (S) of trespass?

39. Does it violate our RICCO laws to hire and pay an operative to obstruct a permanent fire

39. continued)
exit egress walkway route?

40. Is it first degree criminal trespass to hire an operative to trespass on posted property and obstruct a fire exit egress and willfully fail or refuse to remove it when requested by the landowner?

41. Should the Fraternal Order of Eagles Aerie #200 have obeyed the Court Order #23784?

42. Is this civil conviction for conversion under the same Constitution and Rule of Law which Marvin served his country to defend, or is it erroneous?

43. Why was Marvin never told by the Fire Chief or the Nebraska Fire Marshal Deputy to have the County Sheriff remove the trespassing unit obstructing Marvin's exit egress?

PARTIES TO THE PROCEEDINGS

Lawrence D. Marvin
Pro se petitioner
IOOF Building
635 North Main Street
Fremont, Nebraska 68025

Fraternal Order of Eagles Aerie #200
represented by
S. Nicholas Boggy
Sidner, Svoboda, Schilke, Thomsen
Holtorf, Boggy, and Nick
340 East Military Avenue
Fremont, Nebraska 68025

RELATED PROCEEDINGS

Court Order #23784 REMEDY for Marvin, ordering FOE Aerie #200 to get off and stay off Marvin's land. (see Court Exhibit #3)

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

PARTIES TO THE PROCEEDINGS.....vii

RELATED PROCEEDINGS.....viii

TABLE OF CONTENTS.....ix

TABLE OF AUTHORITIES.....1

Constitutional Provisions

Statutory Provisions

Evidentiary Provisions

Other Materials

Unconstitutional to require citizens to condone and/or finance criminal behavior

Clean Hands Doctrine-Old English Court of Equity

U.C.C. to enforce Civil Rights

PETITION FOR WRIT OF CERTIORARI.....2

OPINIONS BELOW.....3

JURISDICTION.....4

CONSTITUTIONAL AND STATUTORY.....5

Provisions Involved

STATEMENT OF THE CASE.....6
Proceedings Below

Statement of Relevant Facts

REASONS FOR GRANTING THE PETITION.....8

CONCLUSION.....13

INDEX TO APPENDICES.....15

A) Dodge County Court Decision

B) Dodge County Court history of case and its final order

TABLE OF AUTHORITIES

NONE - Just general knowledge of three branches of government.

The Declaration of Independence

The Constitution of the United States of America
84th Congress 2nd Session House Document #459

Government Printing Office
Washington, 1956

Major Joint Tortfeaser

Nebraska Revised Statutes
81-501 through 81-541 Assembly Building Permit

28-520 through 28-521 Trespass
28-300 through 28-311.01 Terrorism
Federal CFR 1910.36.

Abuse of Process

Abuse of Discretion

The Commercial Clause of U.S. Constitution with
Protection under the law. Civil Rights Act 1964

PETITION FOR WRIT OF CERTIORARI

Petitioner Lawrence D. Marvin respectfully petitions and prays that a Writ of Certiorari be issued to review the numerous errors, oversights, misunderstandings and the Nebraska Supreme Court refusal to hear Marvin's petition for Further Appeal, because the Respondents had No Right to be there and to obstruct Marvin's fire exit egress, and on modern day Terrorism, HATE CRIMES, and repeated First Degree Criminal Trespass over 30 years by Respondent, and no EXTENUATING CIRCUMSTANCES, or mitigating circumstances to reduce the damages set by the Dodge County Court of Nebraska, for Respondent being a Joint Tortfeasor.

OPINIONS BELOW

1. Dodge County Court reproduced appeal as Case Number CI05-1045. Judgement March 9, 2007

2. Dodge County District Court Case Number CI07-223. Same as County Court July 6, 2007

3. Nebraska Court of Appeals Case Number A-07-0857. Same as County Court

4. Nebraska Supreme Court Case Number has not been assigned. July 16, 2008. Refused Petition for further review

JURISDICTION

Nebraska Court System, had uncontested Jurisdiction, neither party objected to jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition for Writ of Certiorari implicates the Fourteenth Amendment to our United States Constitution, The Patriot Act of 2001, Ricco laws, as well as failure to consider Nebraska Life Safety Statutes, trespass statutes, Terrorism statutes, and contempt of Court Order and refusal to leave Marvin's property, also federal CFR 1910.36 through 1910.36 (f) (2).

The Fourteenth Amendment in relevant part as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution Amend. XIV, sec. 1.

This petition for Writ of Certiorari also quotes excerpts from Nebraska Revised Statutes 81-502, 81-514, 81-538, 81-527, Court Order #23784 which is in Exhibit in file, and regulatory building occupancy permits for Marvin's assembly areas in his building.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

Petitioner was convicted of conversion, while Paragraph 3. reads, "While it is uncontroverted that the condenser unit belonging to the plaintiff was trespassing on the defendant's property, the Court can find no defense for the defendant's actions of converting the plaintiff's property."

The Court makes no comment that the defendant testified that the condenser was obstructing plaintiff's exit egress and defendant had the non-delegatable duty to remove the condenser unit. So, defendant is now petitioning the United States Supreme Court on the enforce federal CFR1910.36 and other remedies.

B. STATEMENT OF RELEVANT FACTS

As Mr. Marvin's petition for Writ of Certiorari focuses on the facts of unclean hands doctrine that 1) the Respondents were not authorized to be on Mr. Marvin's property; by virtue of Court Order #23784: NRS 81-514: Fremont Fire Chief visit requested by Marvin: and the registered letter from Marvin to get off his property. 2) There was not proof of actual damage for food, plus adequate notice was given to remove the food and remove the unit; 3) While Marvin's attorney did not present a formal bill to the Court, the Attorney for the Respondent did ask for the amount owed by his client and Mr. Marvin presented those figures at that time verbally since the Respondent knew that they created and used fiat leases and were now being documented in violating laws, Court Order, Regulations, and Marvin's property rights, so any damages should have been only a credit against the fiat lease(s). Upon civil tort conversion Judgement, Marvin authorized his attorney to appeal to Dodge County District Court. During Court session Mr. Marvin wanted to appeal to Judge Samson but Judge Samson ordered the attorney to control his client, so I did not appeal. So where was justice?

Mr. Marvin authorized his attorney to appeal to the Nebraska Court of Appeals and this was done by paper only. Then Mr. Marvin decided to continue the appeal process pro se. The Nebraska Supreme Court rejected Marvin's petition for further review on July 16, 2008, so now Marvin is requesting A Writ of Certiorari for this very important and unusual appeal about Life Safety, protection and unclean hands of the Respondent.

REASONS FOR GRANTING THE PETITION

Respondent had no right to obstruct Petitioner's fire exit egress permanent walkway route, so they have unclean hands.

The Respondents had no proof of actual damages, just allegations, and why wasn't anything worth saving removed when the Fire Chief made his visit on request of Petitioner, and also the Petitioner sent a registered letter to get off his posted property and that he had already won the remedy #23784 in which the Dodge County District Court Ordered the Respondent to get off and stay off Petitioners property so this is more unclean hands of stare decisis.

Why wasn't the trespassing obstruction considered abandoned like a car in a private parking lot or items abandoned in a rented storage unit for non-payment? We need new case law covering such brazen and yes, criminal behavior by the Respondent. While Nebraska criminal statutes start with chapter 28- but life Safety Codes and building occupancy statutes and state regulations have 81-538 which is a new misdemeanor criminal count each day of violation, so this is a civil law and should be used in this TORT case.

Couldn't just one Nebraska Judge comprehend that this so called innocent cow was intentionally tethered with three leashes documented in the billings from Fremont Electric wiring the unit and Ardon Refrigeration with two coolant lines for circulation of the coolant, yet the Respondent is so innocent with these unclean hands.

We need new case law for unclean hands, so wrongful behavior like the Respondents does not receive nor deserve 100% of any alleged damages,

especially when it is so clear that they could have mitigated any damages by removing their claimed property or asking this Petitioner for another day or two, which would have incurred more liability on themselves if dozens of Latinos from Marvin's Building were killed or injured as a direct result of the obstructed FIRE EXIT EGRESS PERMANENT WALKWAY ROUTE. The Respondents think that it is funny to leave this Petitioner at full risk of possibly millions of dollars for loss of lives and injuries caused by the Respondent and its agents or operatives trespassing on this Petitioners property and also violating the Court Order REMEDY or solution of Exhibit #3 in this court file.

If it took the CONTRACTOR five hours to install the unit in the middle of This Petitioners fire exit egress, then the contractor could have removed said obstruction in less time and without damage to the unit.

After the 9/11 ATTACK IN 2001, many of us Americans feel vulnerable to BULLIES, TERRORISTS, GANGS, AND SO FORTH. The Patriot Act of 2001 prohibits charity organizations with IRS tax exemption from funding unlawful acts, so this Petitioner prays for this Supreme Court to suspend the tax exemption for the Respondent, and suspend the Respondents liquor license, and suspend the Respondents building occupancy permit until the Respondnent can convince this Honorable Court that the Respondents are capable of obeying all our laws, regulations, court orders, and this Petitioners property rights.

Petitioner requests the United States Supreme Court to use its discretionary authority to review this petition for federal question of our Life Safety Codes,

federal CFR 1910.36 through 1910.36(f)(2); Equal Protection under Law, Amendment 14 of our United States Constitution; Uniform Commercial Codes for racism and Hate crimes; Patriot Act of 2001 and the self help used by the Americans September 11, 2001 United Airlines Flight 93 "Let's Roll".

This Petitioner was a volunteer fireman for 32 years as an avocation, and saw devastation live and even more devastation in training films and TV, but as a first responder. He had a duty to remove any obstruction from his FIRE EXIT EGRESS PERMANENT WALKWAY ROUTE as owner of said building and this duty is not delegateable to any one else, however since the Respondent has an easement over this same fire exit egress permanent walkway route, they have a very same duty to see that said fire exit egress permanent walkway route is not obstructed, but they are above the law and so innocent of wrongful behavior and Nebraska Court System thinks or believes such wrongful behavior should be rewarded with 100% damages? So this Petitioner appeals for justice.

Respondents did create an unilateral FIAT LEASE and did use that fiat lease while imposing the high risk of dozens of deaths and dozens of injuries due to the OBSTRUCTED fire exit egress permanent walkway route. What is that value and why shouldn't any damages done by Petitioner be only used as a credit on the unpaid fiat lease(S), plus the next two fiat leases documented in this case file which clearly violate Court Order #23784 as STARE DECISIS.

This Petitioner's SELF-HELP was only used when everything else failed to get the Respondents off his fire exit egress permanent walkway route, so

Petitioners self-help was a nonviolent way to address this wrong.

It is critical for our United States Supreme Court to send a message that the Respondent also can not act above the law and receive 100% of alleged damages, while paying nothing for the multiple fiat leases which violates our multiple laws, regulations, Court Order-star decisis, registered letter to get off, and posted property, and visit by the paid local Fire Chief, and refusing to remove it.

Petitioner doesn't believe that our Constitution gave authority to the Nebraska Court System to obligate a citizen to accomodate criminal behavior let alone to finance criminal behavior with a 100% damage award when the Court also entered in its decision that the Respondent Trespassed. Isn't that wrongful behavior?

CONVERSION - Justification 342F.Supp. 1048, 1062; showing of a sufficient reason in court why defendant did what he is called upon to answer for so as to excuse LIABILITY. In Tort law a PUBLIC NECESSITY will provide a complete justification and Marvin testified in court that the occupancy permits, for his large 18,000 square foot building consisting of four floors, required him to immediately remove obstructions to his fire exits and exit egress walkway permanent route, exigent circumstance and Marvin's attorney presented a copy of the previously awarded REMEDY ordering the Eagles to get off Marvin's land and stay off, Marvin's attorney also put into exhibit a copy of the registered letter from Marvin to the Eagles to get off and of the previous Court Order, and Eagles Secty Bob Niles testified that he and the

Fremont Fire Chief did talk about Marvin's request to have the obstructed fire exit egress immediately cleared of the obstruction, and Bob Niles testified that he and Sam Denoyer and others read Marvin's registered letter. So Marvin should have had reduced damages or no damages at all for the repeated contumacy and the trespass which qualifies for first degree criminal trespass and terrorism threats against Marvin's Latino tenants and Marvin's family, as Marvin testified to in his DEPOSITION required by the Eagles in which Secty Bob Niles attended the entire Deposition.

CONCLUSION

We Americans desperately need new case law for Life Safety Codes to aid government enforcement and citizens enforcement of rights and duties to Life Safety Codes of property owners or deep pocket TORT VICTIMS. Whereas government failed to enforce the numerous STATUTES and REGULATIONS, and STARE DECISIS of Court Order #23784, for both buildings, so duties or obligations entraped Lawrence Marvin under duress to fulfill his nondelegateable duties to Life Safety Codes of his OCCUPANCY PERMIT TO PROVIDE UNBLOCKED OR UNOBSTRUCTED FIRE EXIT EGRESS PERMANENT WALKWAY ROUTE for himself, his family, his tenants and all PUBLIC GUESTS whether Latino or out of state guests in his 18,000 square foot building, and also GOOD SAMARITAN and DEEP POCKETS LIABILITY RISKS for the fraternal brothers and sisters and the PUBLIC of Respondents 21,000 square foot building whose occupants also exit over Marvin's same four feet by 89 feet of property, so over 700 persons, at capacity, by FEDERAL REGULATIONS, USE Marvin's property for Life Safety egress, and all three lower Nebraska Courts acknowledged that this Life Safety egress route was obstructed, but erroneously ruled that Marvin should have condoned this WRONG and accommodate the wrong doer and basically provide financing for criminal trespass and criminal obstruction of egress, by awarding 100% of unproven alleged damages to the Respondent whose hands were NOT CLEAN HANDS. The Respondent should only get $1.00 (one dollar) as NOMINAL DAMAGES AND IT SHOULD ONLY BE A CREDIT against the VERY CLEARLY DOCUMENTED

IN TENTIONAL FIAT LEASES that have not been paid by Respondent.

This petitioner is petitioning this Supreme Court for relief from the injustices of the Nebraska Court System in its not finding extenuating and exigent circumstances to at least reduce alleged damages, due to respondents unclean hands and Joint Tortefeasor, and any damages should have been only a credit against the multiple fiat leases documented in this case. And that fiat lease property is subject to removal and sale for non-payment of rents, rather than the conviction of conversion. Especially after Remedy Court Order #23784, the registered letter to quit or get off Marvin's posted land, and after the Fremont Fire Chief's visit with Bob Niles on request of Lawrence Marvin. Bob Niles and Sam Denoyer and others very clearly violated our Life Safety Codes 101 of Nebraska Revised Statutes 81-502, 81-514, and 81-538; 28-520 and 28-1411, and 28-300 or 28-310, and section 28-311.01 terroristic threats, and racism, against Marvin's Latino tenants, are compelling reasons listed the unfair, unjust, unlawful and believed unconstitutional reasons set forth above; a Writ of Certiorari should be permited to review the Judgement, opinion, errors of omission and or commission by the Nebraska Court System.

Dated October 1, 2008

Respectfully submitted
(Mr.) Lawrence D. Marvin
I00F Building Suite 201
635 North Main Street
Fremont, Nebraska 68025
1-402-372-8978
American Citizen pro se

APPENDICES

A) County Court of Dodge County
Case No CI05-1045

Nebraska Fraternal order of Eagles,
Aerie #200 - Plaintiff

vs

Lawrence D. Marvin - Defendant

March 9, 2007

This bench trial on the plaintiff's first and second causes of action and the defendant's counterclaim came before the Court on December 11, 2006. Appearing in court were S. Nicholas Boggy as counsel for the plaintiff and Daniel Bracht as counsel for and with the defendant, Lawrence Marvin. The Court heard sworn testimony from Samuel Denoyer, Ardon Toelle, Bob Niles and Lawrence Marvin. The Court received Exhibits 1 through 23 into evidence. The Court heard argument from counsel and took this matter under advisement with leave to file briefs in this matter. The Court subsequently received a brief from Mr. Boggy and Mr. Bracht.

The Court, from the evidence presented and being duly advised in the premises, hereby finds and orders as follows:

PLAINTIFF'S FIRST CAUSE OF ACTION

1. The tort of conversion is any distinct act of dominion wrongfully exerted over another's personal

property in denial of or inconsistent with the rights of the owner or secured party. *Otto Farms v. First National Bank of York*, 228 Neb. 287, 422 N.W. 2d 331 (1988); *Jessen v. Blackard*, 159 Neb. 103, 65 N.W. 2d 345 (1954).

2. The plaintiff has met its burden of proof for the tort of conversion based on the defendant's letter (Exhibit No. 4) and the defendant's testimony on direct examination by Mr. Boggy in which he stated he knew it was the plaintiff's property, he took pruning shears and cut the electrical and freon lines, he did not advise the plaintiff that he had the unit, that he considered the property forfeited, and that he owned it.

3. While it is uncontroverted that the condenser unit belonging to the plaintiff was trespassing on the defendant's property, the Court can find no defense for the defendant's actions of converting the plaintiff's property. The measure of damages regarding the conversion of the condenser unit, is the market value of the converted property at the time and place of conversion. *Otto Farms*, 228 Neb. at 293, 422 N.W. 2d at 336. See also NJI 2d 4.27 (Damages - Conversion of Property). The testimony of Arden Toelle and Exhibits 12 and 13 establish the market value of the converted property at the time of conversion.

4. The plaintiff has pled special damages for the spoilage of food and beverage resulting from the defendant's conversion of the condenser unit. According to Nebraska Jury Instructions, special damages may be pled and evidenced in a conversion action. NJI 2d 4.27-1. The plaintiff established special damages by the testimony of Bob Niles and Exhibit 16.

The Court further finds that the spoilage of inventory is the proximate cause of the defendant's conversion for the condenser unit and that special damages should be awarded. The Court is not allowing the payment of plaintiff's officials for amounts that have not been expended by the plaintiff. therefore, the labor damages stated in Exhibit 17 will not be allowed.

PLAINTIFF'S SECOND CASE OF ACTION

5. The plaintiff's second cause of action for damages to the plaintiff's concrete wall is denied for lack of proof of damages. The Court will not address the issue of statute of limitations defense due to the lack of proof of damages. For this reason, the plaintiff's second cause of action for damages is denied. The Court further finds that the county court lacks subject matter jurisdiction to enter any form of injunctive relief as to the conduct of the parties in this matter.

DEFENDANT'S COUNTERCLAIM

6. The defendant's counterclaim is denied for lack of proof of damages.

JUDGMENT

7. The Court awards damages for conversion in favor of the plaintiff and against the defendant in amount of $4,005.28, and special damages in favor of the plaintiff and against the defendant in the amount of $1,089.00 for a total judgment of $5,094.28, plus costs of this action in the amount of $42.00.

BY THE COURT:

B) County Court of Dodge County Nebraska
Case No CI 107-223

Nebraska Fraternal Order of Eagles,
Aerie #200 - Plaintiff

vs

Lawrence D. Marvin - Defendant

July 6, 2007

The matter of the appeal from the decision of the County Court came on for hearing on July 3, 2007. The Appellant/Defendant was present in person and represented by his attorney, Daniel P. Bracht. The attorney for the Appellee/Plaintiff S. Nicholas Boggy was present in person. Evidence was received. Arguments made.

Judgment of the County Court was filed on March 9, 2007 and the Appellant/Defendant timely filed a Notice of Appeal on April 6, 2007. The Bill of Exceptions was filed on May 9, 2007. The Statement of Errors was filed approximately 41 days later, on June 29, 2007.

In appeals from the County Court, the District Court shall review the case for error appearing on the record made in the County Court. Consideration of the cause will be limited to errors properly assigned and discussed.

When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence and is neither arbitrary, unreasonable nor

capricious.

Upon reviewing the record on appeal from the Dodge County Court, and after presentation of the arguments, the COURT FINDS AND ORDERS THAT:

1. The County Court did not err in regard to the law and that there was competent evidence to support the finding that the Plaintiff had met its burden of proof for the tort of conversion. Additionally, assuming without deciding that the County Court erred in the receipt of Exhibit 16, such err would be harmless as other testimony setting forth the amount of damages had previously been received without objection. Therefore, the Court finds that the award of special damages was established by competent evidence and , therefore, was not err. Lastly, the Court finds that the County Court did not err in entering judgment in favor of the Plaintiff and against the Defendant and in denying the Defendant's Counterclaim.

IT IS THEREFORE ORDERED that the Judgment of the Dodge County Court be and hereby is affirmed.

IT IS FURTHER ORDERED that this matter be, and hereby is, remanded to the Dodge County Court for execution of the Judgment in accordance with this Order.

IT IS FURTHER ORDERED that the Clerk of the District Court certify a copy of this order to the Dodge County Court, along with costs incurred in this court.

Dated this 6th day of July, 2007.

BY THE COURT

C) IN THE NEBRASKA COURT OF APPEALS
Case N. A-07-857

Fraternal Order of Eagles Aerie #200, Appellee

vs

Lawrence D. Marvin, Appellant.

May 27, 2008

SIEVERS, MOORE, and CASSEL, Judges.

SIEVERS, Judge.

Pursuant to authority granted to this court under Neb. Ct. R. of Prac. 11B(1) (rev. 2006), this case was ordered submitted without oral argument.

FACTUAL BACKGROUND

The Fraternal Order of Eagles Aerie #200 (Eagles) owns property at 649 North Main Street in Fremont, Nebraska, where the business and social activities of the lodge are conducted. Immediately to the south is property owned by Lawrence D. Marvin. The property line between the Eagles' real estate and Marvin's real estate lies approximately 12 inches south of the Eagles' building and the Eagles have an easement of approximately 36 inches on the north edge of Marvin's real estate. The easement is limited in purpose to that of a fire escape and exit plus an entrance to the building located on the Eagles' real estate. From the photos and testimony the area in question could be described as a rather junky and

and narrow alleyway or walkway.

As a result of a lawsuit filed in the district court for Dodge County, a judgment was entered on February 27, 1980, in which the court found that the Eagles had encroached upon Marvin's property "by erecting two air conditioning units without [Marvin's] permission." After finding that Marvin had no adequate remedy of law, the Eagles were enjoined from encroaching upon Marvin's property "as set forth above and [Eagles] is ordered to remove the two air conditioning units within 90 days from [the] date hereof.' In approximately 1987, there was additional litigation between these parties to enforce the above-described injunction by a contempt proceeding. That matter did not proceed to judgment, as the Eagles removed the offending unit from the area of easement.

In early April 2004, it was determined that the Eagles' walk-in cooler, where various food and beverage items were stored, was going bad. The air conditioner/condenser, then located on the roof of the Eagles building, was checked and it was determined that a new unit was necessary with a degree of urgency. Evidence adduced by the Eagles was that because of the need to get the new unit operational quickly, it was placed temporarily on cement blocks between Marvin's building and the Eagles' building--on the easement area--rather than up on the roof where the old unit was located. The Eagles' evidence was that no one in a position of authority a the time of these occurrences was aware of the past litigation and court orders involving the easement between the two buildings.

On April 16, 2004, the Eagles received a letter

from Marvin which is in evidence as exhibit 4. Summarized, the letter asserted that the new air conditioner/condenser was trespassing on Marvin's land and that he had asked the Fremont Fire Chief and the Deputy Nebraska Fire Marshall to have the Eagles remove the air conditioner/condenser within 48 hours. Marvin's letter asserted that he would "enforce my right, at my convenience and in my way..." after 48 hours from when the Eagles received his letter if the unit was not removed. Marvin's letter closed with the assertion: "I consider said air conditioning unit donated and forfeited to me."

After receiving Marvin's letter, Robert Niles, the secretary of the Eagles, made arrangements for a survey with the intent that if the unit was not in a proper place or was in violation of earlier court proceedings, it would be moved.

However, on April 26, Niles learned that the air conditioner/condenser was gone so he called police, as well as Arden Toelle of Toelle Refrigeration. Toelle testified that when he arrived he found that the electrical lines to the air conditioner/condenser had been cut, although power was still in the line; the refrigeration lines were gone; and the entire unit was gone. Toelle located a replacement unit in South Dakota and installed it on April 28, 2004. Niles testified that the removal of the air conditioner/condenser caused the Eagles to loose beverage and food products in the cooler having a value of $1,089.72, and they had the cost of getting and installing a new unit.

PROCEDURAL BACKGROUND

The Eagles sued Marvin on July 7, 2005. In

legal elements necessary to prove a conversion. Marvin admittedly removed the air conditioner/condenser and admittedly still had it in his possession at the time of the trial. It is true that the evidence shows a technical trespass by placement of the air conditioner/condenser within the area of the easement and outside of the purposes of the easement.

Conversion has been defined as "...any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." Allen v. Dealer Assistance, Inc., 207 Neb. 455, 460,299 N.W.2d 744,747 (1980). In Polley v. Shoemaker, 201 Neb. 91,266 N.W.2d 222 (1978), the Supreme Court pointed out that the tort of conversion is confined to those "major interferences with the chattel, or with the plaintiff's rights in it, which are so serious, and so important as to justify the forced judicial sale to the defendant." 201 Neb. at 95, 266 N.W.2d at 225.

We do not believe that it can seriously be contended that the cutting of the power and refrigerant lines to the air conditioner/condenser along with hauling it away and secreting it from the Eagles does not satisfy the requirement of a serious or major interference with the chattel owned by the Eagles. Marvin's defense, as we understand it, is that because a trespass was occurring and he is under a duty to mitigate damages, cutting the unit loose from its connections and hauling it away was merely mitigation of damages. Marvin advances the argument despite the absence of any evidence of definable damages flowing from the placement of the unit over the boundary line for this brief period of time. Obviously, Marvin engaged in self-help but such went beyond

simply getting the unit off of his easement. Rather, Marvin damaged the unit by cutting the power and refrigerant lines, took possession of it, and secreted it from the Eagles.

The facts of this case indisputably prove a conversion. While it is relatively easy to imagine circumstances in which self-help would be justified and lawful in the face of a trespass in order to mitigate damages, the trespass by the Eagles was hardly of the kind that Marivn would be justified in bypassing the lawful remedies and resorting to self-help--particular of the kind engaged in here.

Marvin complains of the trial court's admission of exhibit 16, a handwritten listing of food items that the Eagles claimed were spoiled by removal of the air conditioner/condenser. The supporting testimony for exhibit 16 was from Robert Niles, secretary of the Eagles club, who testified that one of his job duties was to pay bills, including for food and beverages. Niles testified that he, along with Mark and Rose Grude, the cooks, sat down and examined invoices and bills as well as the weights of the damaged meat and prepared the list. However, Niles admitted that the writing was Rose Grude's and therefore he did not prepare the document. However, Niles further testified that he was present and personally examined the invoices for the price per pound as well as the poundage of the spoiled meat which Rose Grude wrote down to formulate exhibit 16, totaling $1,089.72 for lost food and beverage. The district court found that even if exhibit 16 was improperly admitted over the hearsay and foundation objection of Marvin, there was testimony proving the

amounts contained thereon and therefore the judgment for damaged food and beverage was not erroneous. After reviewing the evidence, the district court did not err in so concluding.

CONCLUSION

Marvin's assignments of error are without merit and the affirmance of the county court's judgment by the district court is hereby affirmed.

AFFIRMED.

D) NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402) 471-3731

July 16, 2008

Daniel P. Bracht
BRACHT LAW FIRM
127 E. Walnut Street*
P.O. Box 252
West Point, NE 68788

IN CASE OF: A-07-000857, Fraternal Order of Eagles Aerie #200 v. Marvin

The following internal procedural submission or filing by a party:

Pet Appellant for Further Review & Brf submitted or filed 06/23/08 **has been reviewed by the court and the following order entered:**
Petition for further review overruled

Respectfully,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IMPORTANT NOTICE

Due to the reduced number of cases awaiting submission to the Supreme Court and Court of Appeals, and as part of the courts' continuing efforts to reduce case-processing time, **future requests for brief date extensions will be closely scrutinized.** See Neb. Ct. R. of Prac. 6F and 9A. Pursuant to Neb. Ct. R. of Prac. 10A, if an appellant's default for failure to file briefs is issued, appellant "is required to file a brief within 10 days after receipt of such notice. Appellant's failure to file a brief in response to the notice of default subjects the appeal to dismissal."

PLEASE BE ADVISED THAT THESE RULES WILL BE STRICTLY ENFORCED.

E) IN THE DISTRICT COURT OF
DODGE COUNTY, NEBRASKA

CASE NO. CI07-223

FRATERNAL ORDER OF EAGLES, Aerie#200,
Plaintiff,

vs.

LAWRENCE D. MARVIN,
Defendant.

AUGUST 20, 2008

Now on this 20th day of August, 2008, this matter came before the Honorable John E. Samson, District Judge, on the mandate of the Nebraska Court of Appeals filed herein on the 19th day of August, 2008.

The Court being fully advised in the premisis FINDS, ORDERS, ADJUDGES, AND DECREES:

1. That the Mandate of the Nebraska Court of Appeals affirming the appeal of the judgment of this Court shall be spread upon the Judgment records of this Court as required by law; and

2. That the costs of appeal to the foregoing court are hereby ordered to be paid by Appellant and are taxed at $122.00.

BY THE COURT:

F) IN THE COUNTY COURT OF DODGE COUNTY, NEBRASKA

FRATERNAL ORDER OF EAGLES, Aerie #200,
Plaintiff,

vs.

LAWRENCE D. MARVIN,
Defendant.

AUGUST 25, 2008

THIS MATTER came on for hearing on the 28th day of July, 2008, on the Motion of the Plaintiff for an order directing that payment of the supersedeas bond in the amount of $5,500.00 deposited with this Court by the Defendant be paid to the Plaintiff. The Plaintiff appeared by its attorney, S. Nicholas Boggy. The Defendant, Lawrence D. Marvin, appeared personally and pro se. Evidence was adduced and the Court being advised in the premises finds as follows:

1. On the 16th day of July, 2008, the Nebraska Supreme Court overruled the Defendant's petition for further review.

2. Subsequent to the Supreme Court's ruling, the Defendant filed a "Desire of Stay of the Mandate or Motion Recalling the Mandate" with the Nebraska Supreme Court.

3. On the 15th day of August, 2008, the Nebraska Court of Appeals issued a mandate for this Court to enter judgment in conformity with the judgment and opinion of this Court, which mandate was filed with the District Court of Dodge County on

August 19, 2008, and with this Court on August 20, 2008.

4. Through July 28, 2008, the total amount of the judgment, including interest, plus costs, was $5,698.08.

IT IS THEREFORE ORDERED that the Clerk of the County Court shall pay the sum of $5,500.00, earlier deposited by the Defendant, Lawrence D. Marvin, to the Plaintiff, Fraternal Order of Eagles, Aerie #200.

BY THE COURT: